

AMENDED IN SENATE APRIL 25, 2000

AMENDED IN SENATE MARCH 27, 2000

SENATE BILL

No. 1822

Introduced by Senator Bowen

February 24, 2000

An act to add Section 1198.6 to the Labor Code, relating to employee records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1822, as amended, Bowen. Employee computer records.

(1) Existing law requires employers, generally, to grant employees the right to inspect personnel files.

This bill would prohibit an employer from secretly monitoring the electronic mail or other computer records generated by an employee. The bill would provide that an employer who intends to inspect, review, or retain any electronic mail or any other computer records generated by an employee shall prepare and distribute to all employees the employer's workplace privacy and electronic monitoring policies and practices. *The bill would apply to specified public entities.* Because a violation of this prohibition would be a misdemeanor, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1198.6 is added to the Labor
2 Code, to read:

3 1198.6. (a) (1) An employer may not secretly
4 monitor the electronic mail or other computer records
5 generated by an employee.

6 (2) For purposes of this subdivision, “secretly
7 monitor” means to inspect, review, or retain electronic
8 mail or other computer records in a manner that does not
9 comply with the policies and practices that are disclosed
10 to the employee pursuant to this section.

11 (b) An employer who intends to inspect, review, or
12 retain any electronic mail or any other computer records
13 generated by an employee shall prepare and distribute to
14 all employees, by hard copy or electronic notice, upon the
15 commencement of employment for new employees, or
16 by March 1, 2001, for existing employees, the employer’s
17 workplace privacy and electronic monitoring policies
18 and practices. Upon distributing these policies and
19 practices, the employer shall require every affected
20 employee to sign or electronically verify that he or she has
21 read, understood, and acknowledges receipt of the
22 policies and practices. If an affected employee to whom
23 the policies and practices have been provided pursuant
24 to this subdivision declines to sign or electronically verify
25 that he or she has read, understood, and acknowledges
26 receipt of the policies and practices, the employer may
27 comply with the requirements of this subdivision by
28 having the person who provided the policies and
29 practices to the affected employee sign and retain a
30 statement to that effect and provide a copy of that
31 statement to the affected employee.

32 (c) *An employer shall be deemed in compliance with*
33 *the notice requirement of subdivision (b) as to any*

1 *employee if the employer electronically posts the notice*
2 *on the employee's computer screen and receives*
3 *electronic verification that the employee has received,*
4 *read, and understood the notice.*

5 (d) The workplace privacy and electronic monitoring
6 policies and practices adopted pursuant to subdivision
7 (b) shall include, but not be limited to, provisions that
8 ensure an employee's right to review any data pertaining
9 to the employee, as provided for in Section 1198.5, that is
10 collected by employer monitoring and the right to
11 dispute and have inaccurate data corrected or deleted by
12 the employer.

13 (e) *For purposes of this section, "employee" includes,*
14 *but is not limited to, any individual employed by the state*
15 *or any organizational subdivision thereof, any county,*
16 *city, or city and county, whether organized under the*
17 *general law or a charter, any school district, community*
18 *college district, the University of California, or any*
19 *political subdivision or public corporation of the state.*

20 SEC. 2. No reimbursement is required by this act
21 pursuant to Section 6 of Article XIII B of the California
22 Constitution because the only costs that may be incurred
23 by a local agency or school district will be incurred
24 because this act creates a new crime or infraction,
25 eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section
27 17556 of the Government Code, or changes the definition
28 of a crime within the meaning of Section 6 of Article
29 XIII B of the California Constitution.